



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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Phone 800-227-8917  
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FILED  
EPA REGION VIII  
HEARING CLERK

DOCKET NO.: CWA-08-2018-0003

IN THE MATTER OF:

B&C QUICK TEST, INC.

RESPONDENT

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FINAL ORDER

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (3) of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon filing this Consent Agreement and Final Order.

SO ORDERED THIS 26<sup>th</sup> DAY OF February, 2018.

Katherin E. Hall  
Katherin E. Hall  
Regional Judicial Officer

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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IN THE MATTER OF: )  
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B&C QUICK TEST, INC )  
2460 NORTH 500 EAST )  
VERNAL, UT 84078 )  
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Respondent. )  
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Docket No. CWA-08-2018-0003

COMBINED COMPLAINT AND  
CONSENT AGREEMENT UNDER  
SECTION 311(j) OF THE CLEAN  
WATER ACT

**I. PRELIMINARY STATEMENT**

1. This proceeding is subject to the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 Code of Federal Regulations (C.F.R.) part 22 (Consolidated Rules of Practice). This Combined Complaint and Consent Agreement (Agreement) is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and is executed pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).
2. On the U.S. Environmental Protection Agency's (EPA) behalf, the undersigned officials, are delegated authority to settle civil administrative penalty proceedings under section 311(b)(6)(A) of the Act, 33 U.S.C. § 1321(b)(6)(A).

**II. JURISDICTION**

3. The EPA has jurisdiction over this matter pursuant to section 311(b)(6)(B)(i) of the Clean Water Act (the Act), 33 U.S.C. § 1321(b)(6)(B)(i).
4. For the purposes of this settlement only, Respondent admits to the jurisdiction of the EPA over the allegations contained herein.

**III. GOVERNING LAW**

5. Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), directed the President to issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil ... from vessels and from onshore and offshore facilities, and to contain such discharges . . ."
6. In response to the directive referenced in Paragraph 5, above, the EPA promulgated 40 C.F.R. part 112.

7. A facility subject to 40 C.F.R. part 112 is required to prepare a written Spill Prevention Control and Countermeasure (SPCC) Plan and to adhere to the discharge prevention and containment procedures specified in that regulation.

#### **IV. STIPULATED FACTS**

8. Respondent is B&C Quick Test, Inc., a Utah corporation.
9. Respondent's principal office is located at 2460 North 500 East Vernal, UT 84078.
10. Respondent is a "person" within the meaning of sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5).
11. Respondent owns and operates a "facility" as defined in 40 C.F.R. § 112.2, including, but not limited to, "any fixed onshore building, property ... pipe ... oil storage ... [or] oil distribution." The facility is known as "B&C Quick Test, Inc." located at 1250 East Highway 40, Vernal, Utah 84078 (hereinafter the "Facility").
12. The Facility includes four storage containers as defined in 40 C.F.R. § 112.2. The Facility has a total aboveground storage capacity of 1,555 gallons of solvent, used oil and diesel fuel (oil) and is subject to the SPCC regulations.
13. Respondent acquired ownership of the Facility in 2007.
14. Commencing in 2007, Respondent became an "owner or operator" of the Facility as defined in section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6).
15. Respondent is engaged in storing, transferring, and/or distributing oil at the Facility.
16. The Facility is an "onshore facility" as defined in section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), and a "non-transportation related" facility as defined in 40 C.F.R. § 112.2.
17. The oil referenced in Paragraph 12, above, meets the definition of "oil" in section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1) and 40 C.F.R. § 112.2.

#### **V. VIOLATIONS ALLEGED**

18. The location of the Facility, is reasonably expected to discharge oil and/or other pollutants into roadside ditches south and then east and into an unnamed tributary of Ashley Creek. Ashley Creek flows into the Green River and/or its tributaries and/or its adjoining shorelines in quantities that would (a) violate applicable water quality standards or (b) cause a film or a sheen upon or discoloration of the surface of the navigable waters of the United States or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of such waters or their adjoining shorelines.
19. The Green River is a "navigable water" as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. §§ 110.1 and 112.2.
20. At all times after 2007, the Facility has been subject to the SPCC requirements at 40 C.F.R. part 112.
21. On August 22, 2013, the EPA inspected the Facility for compliance with SPCC requirements.

22. During this inspection, the EPA found alleged violations of the SPCC requirements under 40 C.F.R. part 112. The technical violations of the part 112 regulations are as follows:

- a. Failure to prepare and implement procedures for conducting periodic inspections and keep a record of the inspections and tests, signed by the appropriate supervisor or inspector, with the SPCC Plan for a period of three years, in violation of 40 C.F.R. § 112.7(e);
- b. Failure to conduct training of oil handling personnel on discharge prevention, in violation of 40 C.F.R. § 112.7(f)(1);
- c. Failure to designate a person responsible for spill prevention, in violation of 40 C.F.R. § 112.7(f)(2);
- d. Failure to conduct annual trainings for personnel each year to ensure personnel understanding of the SPCC Plan, in violation of 40 C.F.R. § 112.7(f)(3);
- e. Failure to restrain drainage from diked storage areas by valves to prevent a discharge into the drainage system or facility effluent treatment system, except where facility systems are designed to control such discharge. You may empty diked areas by pumps or ejectors; however, you must manually activate these pumps or ejectors and must inspect the condition of the accumulation before starting, to ensure no oil will be discharged., in violation of 40 C.F.R. § 112.8(b);
- f. Failure to prevent drainage of uncontaminated rainwater from the diked area into a storm drain or discharge of an effluent into an open watercourse, lake, or pond, bypassing the facility treatment system unless you inspect the retained rainwater to ensure that its presence will not cause a discharge as described in §112.1(b), in violation of 40 C.F.R. § 112.8(c)(3)(ii);
- g. Failure to keep adequate records of such events, for example, any records required under permits issued in accordance with §§122.41(j)(2) and 122.41(m)(3) of this chapter, in violation of 40 C.F.R. § 112.8(c)(3)(iv);
- h. Failure to conduct regular integrity testing of aboveground storage containers and integrity testing after material repairs, including comparison records. You must inspect the outside of containers for “signs of deterioration, discharges or accumulation of oil” inside the diked areas, in violation of 40 C.F.R. § 112.8(c)(6);
- i. Failure to remove visible discharges and accumulations of oil, in violation of 40 C.F.R. § 112.8(c)(10);
- j. Failure to maintain records for annual aboveground piping integrity testing, in violation of 40 C.F.R. § 112.8(d)(4).

23. On August 22, 2013, the EPA completed an inspection of the facility. At the time of inspection, it was found that the facility did not have an SPCC Plan. The violations of the part 112 regulations are as follows:

- a. Failure to prepare in writing and implement a Spill Prevention Control and Countermeasure Plan in accordance with §112.7 and any other applicable section of this part, in violation of 40 C.F.R. § 112.3;
24. Each of the deficiencies described in subparagraphs 22(a)-(j) and 23(a), above, constitute a separate violation of section 311(j) of the Act, 33 U.S.C. § 1321(j), and 40 C.F.R. part 112, for which Respondent is liable for civil administrative penalties pursuant to section 311(b)(6)(A)(i) of the Act, 33 U.S.C. § 1321(b)(6)(A)(i).

## **VI. CIVIL PENALTY**

25. Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), and 40 C.F.R. part 19 authorizes the EPA to assess Class I administrative penalties of up to \$18,477 per violation with a maximum penalty amount not to exceed \$46,129.
26. After consideration of the facts of this case as they relate to the factors set forth in section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8), the parties agree to an administrative penalty of \$7,100 for the violations alleged herein.
27. Respondent agrees to:
- a. pay the civil penalty of \$7,100 within 30 calendar days of the Effective Date of this Agreement;
  - b. pay the civil penalty of \$7,100 using any method, or combination of methods, provided on the website <http://www2.epa.gov/financial/additional-instructions-making-payments-epa>, and identifying each and every payment with the "Docket No."
  - c. send a copy of the check or notification of wire transfer or online payment, within 24 hours of the time of payment, to the EPA Region 8 Regional Hearing Clerk and Darla Hohman (at the addresses provided below). A transmittal letter identifying the case title and docket number must accompany the remittance and each of the copies of the check or notification.

Regional Hearing Clerk  
U.S. Environmental Protection Agency (8RC)  
1595 Wynkoop Street  
Denver, Colorado 80202-1129

and

Darla Hohman  
U.S. Environmental Protection Agency (8ENF-W-WO)  
1595 Wynkoop Street  
Denver, Colorado 80202-1129

28. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, the EPA may:

- a. request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2), from the Effective Date of this Agreement; the United States' enforcement expenses; and a 20 percent quarterly nonpayment penalty, authorized by 33 U.S.C. § 1321(b)(6)(H);
- b. refer the debt to a credit reporting agency or a collection agency, 33 U.S.C. § 1321(b)(6)(H), 40 C.F.R. §§ 13.13, 13.14, and 13.33;
- c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. part 13, subparts C and H; and
- d. suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

## **VII. GENERAL PROVISIONS**

29. This Agreement, upon incorporation into a final order, applies to and is binding upon the EPA and upon Respondent, and Respondent's officers, directors, agents, successors and assigns. Each signatory to this Agreement certifies that they are authorized to execute and legally bind the party they represent in this Agreement.
30. Respondent:
- a. admits to the stipulated facts in this Agreement;
  - b. neither admits nor denies the allegations contained herein;
  - c. agrees to pay the administrative civil penalty;
  - d. agrees to waive any rights to contest the allegations; and
  - e. agrees to waive any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Agreement and subsequently issued Final Order, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701 -706.
31. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
32. The provisions of this Agreement shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representative, successors, and assigns. From the Effective Date of this Agreement until full payment of the civil penalty, Respondent must give written notice and a copy of this Agreement to any successors in interest, prior to any transfer

of ownership, or control of any portion, of the Facility. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this Agreement unless the EPA has provided written approval of the release of said obligations or liabilities.

33. By signing this Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
34. Each party will bear its own attorney's fees, costs, and disbursements incurred in this proceeding.
35. Penalties paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.
36. This Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof, with the exception of the Final Order to be issued by the Regional Judicial Officer.
37. In accordance with 40 C.F.R. § 22.18(c), this Agreement, upon incorporation into a final order, and full payment of the penalty assessed shall be a complete and full resolution of Respondent's liability for federal civil penalties for the violations alleged, above.
38. A violation of the Final Order may result in civil judicial action for an injunction or civil penalties as provided in section 309(b) of the Act, 33 U.S.C. § 1319(b), as well as criminal sanctions as provided in section 309(c) of the Act, 33 U.S.C. § 1319(c). The EPA may use the information submitted under this Order in an administrative, civil judicial, or criminal action.

#### **VIII. CONTINUING OBLIGATION TO COMPLY**

39. Neither assessment nor payment of the administrative penalty shall affect Respondent's continuing obligation to comply with the Act and any regulation, order, or permit issued pursuant to the Act, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

#### **IX. EFFECTIVE DATE**

40. Respondent and the EPA agree to the issuance of a final order ratifying this Agreement. Upon filing, the Regional Judicial Officer will transmit a copy of the filed Agreement to Respondent. The "Effective Date" of this Agreement is the date of issuance of a final order by the Regional Judicial Officer.



**ENVIRONMENTAL PROTECTION AGENCY  
REGION 8  
Complainant**

Date:

2/15/18

By:

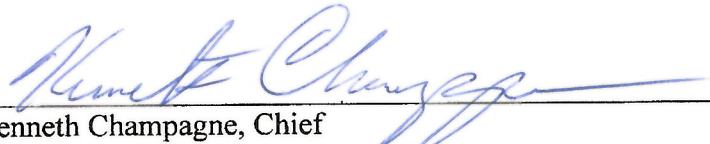


James H. Eppers, Supervisory Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance,  
and Environmental Justice  
United States Environmental Protection Agency, Region 8  
1595 Wynkoop Street (8ENF-L)  
Denver, Colorado 80202-1129

Date:

2/15/2019

By:



Kenneth Champagne, Chief  
OPA and Wetlands Enforcement Unit  
Technical Enforcement Program  
Office of Enforcement, Compliance,  
and Environmental Justice  
United States Environmental Protection Agency, Region 8  
1595 Wynkoop Street (8ENF-W-WO)  
Denver, Colorado 80202-1129



**B&C Quick Test, Inc.  
Respondent**

Date: February 2, 2018 By:



Christi Cook  
Vice President  
B&C Quick Test, INC.  
2460 North 500 East  
Vernal, Utah 84078

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT and FINAL ORDER** in the matter of **B&C QUICK TEST, INC.**; **DOCKET NO.: CWA-08-2018-0003** was filed with the Regional Hearing Clerk on February 26, 2018.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Marc Weiner, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on February 26, 2018, to:

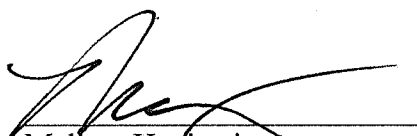
Respondent

Christi Cook, Vice President  
B&C Quick Test, Inc.  
2460 North 500 East  
Vernal, Utah 84078

And emailed to:

Jessica Chalifoux  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive (MS-0002)  
Cincinnati, Ohio 45268

February 26, 2018

  
Melissa Haniewicz  
Regional Hearing Clerk